

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



Th9a

Filed:	9/21/04
49th day:	Waived
Staff:	JB-SC
Staff report:	5/28/05
Hearing date:	6/9/05

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION/ DE NOVO FINDINGS

Appeal NumberA-3-SLO-04-061, Oceano Pavillions

Applicant.....Oceano Pavillions LLC, Attn: Robert Mueller

AppellantsCommissioners Meg Caldwell and Sara Wan; Airport Land Use Commission of San Luis Obispo County.

Local governmentSan Luis Obispo County

Local DecisionD010378P, Approved with Conditions (August 10, 2004)

Project locationApproximately 200 feet north of Pier Avenue within the community of Oceano, San Luis Bay Planning Area, San Luis Obispo County (APN 061-011-042).

Project descriptionConstruction of a 16-unit hotel and manager's unit; underground parking.

File documents.....San Luis Obispo County Certified Local Coastal Program (LCP); and San Luis Obispo County CDP Application File D010378P.

Staff recommendation ...**Substantial Issue Raised; Approval with Conditions**

Summary of Staff Recommendation:

San Luis Obispo County approved a proposal to demolish and replace an existing single-story commercial building and asphalt parking lot with a new three-story 16-unit hotel, manager's quarters, and 20-space underground parking garage. The project is located on the inland side of Strand Avenue, approximately 200 feet north of Pier Avenue, in the community of Oceano. The project presents a challenging set of circumstances for commercial siting in that the property is zoned for high priority visitor-serving use, is located within an airport review area, and is adjacent to sensitive State Park dune habitat. The standard of review is the San Luis Obispo County certified Local Coastal Program (LCP).

The Coastal Commission and the San Luis Obispo County Airport Land Use Commission have appealed the project. The Appellant's contentions can be grouped into 3 categories: (1) Dune ESHA protection, (2) Airport land use compatibility, and (3) Public Access and Recreation.

Appeals submitted by Commissioners Caldwell and Wan raise issue concerning new development within and adjacent to environmentally sensitive dune habitat (ESHA). The project site is located adjacent to large swaths of undeveloped coastal dunes primarily owned by State Parks. The LCP



California Coastal Commission
June 2005 Meeting in San Pedro

Staff: J. Bishop Approved by:

protects coastal dunes from development impacts by, among other things, requiring a buffer from the identified resource. In this case, the County approved project does not include a buffer from the dunes and the County record indicates that approximately 1,300 square feet of dune habitat will be removed to accommodate the project. Therefore, **a substantial issue with conformance to the LCP exists.**

The site is located in an area covered by the Oceano County Airport Land Use Plan, which is incorporated by reference into the certified LCP. The San Luis Obispo County Airport Land Use Commission (ALUC) contends that the 16-unit hotel and manager's quarters is not compatible with the nearby airport because it exceeds the maximum density and intensity of use allowed under the Airport Land Use Plan. Staff's review of the LCP and the calculations used by the County to determine the allowable number of rooms shows that the project is generally consistent with the ALUP. The project site is within the urban reserve line (URL) in a developed area zoned for this type of land use. The County project has been conditioned to reduce the number of units from 25 to 16 and includes a variety of measures to limit exposure to excessive noise, light, and other safety hazards. While the ALUC raises valid concerns regarding the projects compatibility with the nearby airport, they do not raise to the level of a substantial issue.

The ALUC also contends that the County approved project would interfere with the public's ability to access the coast by air. The appellants contend that the development would create significant noise and safety incompatibilities, which could lead to restrictions on use or even closure of the Oceano airport. The appeal cites Coastal Act Section 30211 which states, "Development shall not interfere with the public's right to access the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation". While the Oceano airport is located in the coastal zone, it is located inland from the beach and does not provide direct access to the shoreline. Moreover, the LCP envisions the project area to be redeveloped with commercial visitor-serving uses such as overnight hotel accommodations. The benefits to visitor-serving recreation and public access opportunities to the shoreline provided by the project outweigh any possible adverse impacts to the airport. Thus, no substantial issue exists.

Staff further recommends that the Commission **approve with conditions** a coastal development permit for a project that avoids adverse impacts to the adjacent State Parks dune complex, and maximizes the public's ability to access the coast. To accomplish this, staff recommends the following:

- Submittal of Final Project Plans that include a 50-foot buffer area between the development and the adjacent dunes.
- Placement of a Deed Restriction on the property requiring that the buffer area be maintained in a way that ensures dune habitat protection.
- Submittal of a Dune Landscape and Stabilization Plan for the buffer area using native plants.
- Submittal of a Construction Plan that provides for the installation of protective fencing, controls the discharge of pollutants, and includes biological monitoring during construction.
- Submittal of a Drainage and Erosion Control Plan.
- Provide for archaeological monitoring during ground disturbing activities

Only as conditioned can the project be found consistent with the San Luis Obispo County certified LCP and the Public Access and Recreation policies of the Coastal Act.



Staff Report Contents

Summary of Staff Recommendation	1
1. Appeal of San Luis Obispo County Decision	3
A. San Luis Obispo County Action	3
B. Summary of Appellants' Contentions	4
C. Appeal Procedures	4
2. Staff Recommendation on Substantial Issue	5
3. Staff Recommendation on De Novo Permit	5
4. Substantial Issue Findings	6
5. Conditions of Approval	10
A. Standard Conditions	10
B. Special Conditions	10
6. De Novo Findings and Declarations	16
A. Project Description and Location	16
B. Coastal Development Permit Findings	17
1. Environmentally Sensitive Habitat Areas (ESHA)	17
2. Visual and Scenic Resources	23
3. Water Quality	25
4. Archaeology	26
5. Public Access and Recreation	29
7. California Environmental Quality Act (CEQA)	30
8. Exhibits	
A. Vicinity Map	
B. Project Plans	
C. San Luis Obispo County Final Action (includes Findings and Conditions of Approval)	
D. Commissioners Caldwell and Wan Appeal Contentions	
E. Airport Land Use Commission Appeal Contentions	
F. Oceano Specific Plan Conceptual Design Map	
G. Aerial Photo from Ecological Constraints Analysis (Levine Fricke, 2003)	
H. Site Photos	
I. Correspondence	

1. Appeal of San Luis Obispo County Decision

A. San Luis Obispo County Action

On August 10, 2004 the San Luis Obispo County Board of Supervisors approved the proposed project subject to multiple conditions (see Exhibit C for the County's Final Local Action Notice). Notice of the County action on the coastal development permit (CDP) was received in the Coastal Commission's Central Coast District Office on September 7, 2004. The Coastal Commission's ten-working day appeal period for this action began on September 8, 2004 and concluded at 5pm on September 21, 2004. Two valid appeals (see below) were received during the appeal period.



B. Summary of Appellants' Contentions

Commissioners Caldwell and Wan have appealed the final action taken by the County on the basis that approval of the project is inconsistent with the certified Local Coastal Program ESHA protection provisions. Please see Exhibit D for the full text of the appeal.

The Airport Land Use Commission (ALUC) has appealed the final action taken by the County on the basis that the approval of the project is inconsistent with LCP provisions related to Oceano Airport land use compatibility. The ALUC also contends that the project is inconsistent with Coastal Act provisions intended to ensure the public's right of access to the coast (in this case by air). Please see Exhibit E for the full text of the appeal.

C. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the first public road and the sea; because it is located within 100 feet of a recreation area; and because the project is within 300 feet of the inland extent of the beach.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus this additional finding will need to be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government either personally or through their representatives, and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.



2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: *I move that the Commission determine that Appeal No. A-3-SLO-04-061 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION of SUBSTANTIAL ISSUE: Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE: The Commission hereby finds that Appeal No. A-3-SLO-04-061 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

3. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

MOTION: *I move that the Commission approve Coastal Development Permit Number A-3-SLO-04-061 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL: Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT: The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the provisions of the San Luis Obispo County certified Local Coastal Program. Approval of the coastal development permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.

4. Substantial Issue Findings



A. Environmentally Sensitive Habitat Areas

1. Summary of Appellant's Contentions

The two Commissioner Appellants (Caldwell and Wan) contend the project is inconsistent with the ESHA policies of the San Luis Obispo County LCP because the County-approved project has not been sited and designed to avoid significant impacts to coastal dune ESHA. More specifically, the appellants contend that “the dune ESHA boundary has not been clearly established” and that “appropriate buffers may not have been included in the project.”

2. Applicable Policies

The applicable LCP provisions include LCP *Coastal Plan Policies* 1, 2, 27, 34, and *Oceano Specific Plan* Standard 9. These provisions are quoted below in the De Novo findings. In summary these LCP policies require new development within or adjacent to ESHA's and State Park holdings avoid significant habitat impacts (Policies 1, 2, and 29); disturbance or destruction of any dune vegetation is limited to resource dependent uses where no feasible alternative exists and is limited to the smallest area possible (Policy 36); the boundary of sensitive dune habitat in the project area must be studied and clarified and protected through buffering (Oceano Specific Plan Standard 9).

3. Analysis of Consistency with Applicable Policies

The project site is located adjacent to dune habitat primarily owned by the California Department of Parks and Recreation. The LCP identifies this area as sensitive dune habitat. The LCP protects dune habitat from development impacts by, among other things, allowing only a limited amount of development within or adjacent to the identified resource. Buffering is required for projects adjacent to the dunes in the Pier Avenue and Beach Area of Oceano.

The County approved project includes a 3-story motel structure, and associated hardscape adjacent to sensitive dune habitat without any buffer. The project will introduce significant new noise, lights, activities, and other possible disturbances immediately adjacent and into the dunes. In addition to allowing a project without a dune buffer, the County record indicates that the project would permanently remove approximately 1,300 square feet of dune habitat that has begun to encroach onto the applicant's property. Rather than avoid development within or adjacent to the dunes, the County permit was conditioned to require an offsite dune restoration and stabilization plan within the undeveloped forty-foot Smith Avenue right-of-way (a paper street) along the northern property boundary.

There is little information in the administrative record regarding the expected effect of the project on the existing dune habitat, and limited if any biological justification supporting a project without any buffer. The area most suitable for development is outside of the dunes and LCP required buffer area. Moreover, there is no evidence in the County file that the entirety of the site is necessary to accommodate a viable commercial use at this location. Thus, it does not appear that the current motel project has been sited or designed to minimize impacts to the dunes as required by the LCP.

4. ESHA Substantial Issue Conclusion

In conclusion, the appellant's contentions that the approval is lacking in dune ESHA protection and appropriate buffers are valid and raise a substantial issue. The proposed development is located within



the LCP required dune buffer area and the County imposed mitigation falls short of ensuring that all dune ESHA's are identified and protected.

B. Oceano Airport Land Use Compatibility

1. Appellant's Contentions

The Airport Land Use Commission (ALUC) contends that the County approval of a 16-unit hotel and manager's quarters "violated LCP requirements that development in the vicinity of the Oceano County Airport be consistent with the adopted Airport Land Use Plan." The ALUC contends that the project is not compatible with the nearby Oceano airport location because it exceeds the maximum permissible residential density and nonresidential intensity of land use for the site.

2. Relevant Local Coastal Program Provisions

The applicable LCP provisions include Coastal Zone Land Use Ordinance (CZLUO) Section 23.07.022 requiring that new development proposed within the Airport Review Area be consistent with the adopted Airport Land Use Plan. CZLUO Section 23.07.022 states:

***CZLUO Section 23.07.022 - Limitation on Use:** Developments within areas covered by land use plans adopted by the San Luis Obispo County Airport Land Use Commission are limited to those identified in the plans as "compatible" and "conditionally approvable." Projects conditionally approvable may be granted a permit only when in conformity with all conditions of the applicable airport land use plan or implementing rules adopted pursuant thereto.*

The conditions that must be satisfied to render conditionally approvable commercial land uses compatible in airport Area 3A, as listed in Appendix B of the Oceano Airport Land Use Plan, are summarized as follows:

Conditions required for all land uses in Zone 3A

1. *Usage shall be compatible with airport location.*
2. *Soundproofing where appropriate to reduce noise to acceptable level according to State guidelines.*
3. *No electromagnetic transmissions which would interfere with operation of aircraft.*
4. *All bulk storage of volatile or flammable liquid be underground.*
5. *An Avigational Easement shall be required for users.*

Conditions required for commercial land uses in Zone 3A

1. *Number of people using the facility be kept to a minimum.*

3. Analysis of Consistency with Applicable Policies

The proposed motel project, as conditioned by the County, is generally consistent with the applicable



airport land use compatibility ordinance, but raises concerns regarding allowable number of people using the new motel building.

The site is within Area 3A according to the ALUP. This area is designated as the Inner Approach/Departure Zone for the Oceano Airport. The State Compatibility Guidelines, from the California Airport Land Use Planning Handbook provides a range of people per acre allowed on the site. For residential uses, the Compatibility Guidelines allow a maximum residential density of 1 dwelling unit per 10-20 acres. For nonresidential uses, the Compatibility Guidelines indicate that projects within the Inner Approach/Departure Zone may allow a maximum land use density range of 25 to 40 persons per acre for rural/suburban areas and 40 to 60 persons per acre for urban areas. The Compatibility Guidelines do not specify the number of people per unit to use when converting these figures to the allowable number of motel rooms.

The County prepared an analysis of the range of allowable number of motel units for the site. Based on the County staff's evaluation, the number of allowable units ranges from 3.75 units (the lower end for rural areas, using an estimation of 2.5 people per motel room) to 16.40 units (the higher end for urban areas, using an estimation of 1.5 people per motel room). To keep the number of persons using the facility to a minimum, the County reduced the number of units from 25 to 16. The County approval of 16 units and a manager's quarters is based on 60 people per acre and 1.5 people per room.

First, the appellants contend that the approval of a manager's unit would create a residential density in excess of the maximum of one dwelling unit per 10-20 acres allowed under the ALUP. In this case, applying the residential density standard to this commercial hotel project seems unjustified. Contrary to this assertion, the inclusion of a manager's unit does not change the use of the motel from commercial to residential. The County approval limits the manager's quarters to no more than a single unit and it would be unreasonable to prohibit a managers unit entirely. Therefore, this contention does not rise to a level of substantial issue with respect to residential densities.

Second, the appellants also contend that approval of a commercial 16-unit motel "greatly exceeds the maximum allowable range of 25 to 40 persons per acre" for the site. The first question that must be answered in analyzing this appeal contention is if the County's application of the urban density range of 40 to 60 persons per acre is appropriate. In this case, it appears the County reasonably chose the urban area density range and the maximum 60 people per acre based on the fact that the project is located within the Urban Reserve Line (URL) and within a developed area zoned for Commercial Retail land use.

It is also reasonable to consider the timing of when people will be in the rooms. The figures analyzed represent the limits on the maximum number of people who might be present in the hotel during normal business hours of use. For a visitor-serving hotel project in a beach location such as this, one can assume that guests will check-in, then leave the premises for some time to enjoy the beach or other area attractions, and return later. Thus, the time most likely for the hotel to have the maximum number of people present would be at night when the guests are in their rooms or sleeping. This is also the time when the airport has little or no overflight activity, thereby reducing the degree of disruptions and safety incompatibilities that might occur with the airport.

Lastly, the appellants also contend that the County arbitrarily chose to utilize a figure of 1.5 persons per



hotel room when converting the maximum allowable number of persons at this site to the number of hotel rooms. In other words the County's application of 1.5 persons per room means that at 100% occupancy, half of the rooms would have a single occupant and the other half would have two occupants. This appears to be a reasonable assumption.

4. Airport Compatibility Conclusion

The applicant's original proposal included a 25-unit hotel and manager's unit. To keep the number of persons using the facility to a minimum, the County reduced the number of units from 25 to 16. It appears that the calculations used by the County in making its decision are justified. For all of the reasons above, the appellant's contention that a 16-unit motel and manager's quarters exceeds the maximum residential density and nonresidential intensity of use allowed under the LCP, does not raise a substantial issue.

D. Public Access and Recreation

1. Summary of Appellant's Contentions

The ALUC contends that the County approved project "violated the California Coastal Act provisions intended to ensure the public's right of access to the coast." The ALUC contends that the Oceano Airport is one of the few facilities in the state that provides direct public access to the coast by air and the construction of the hotel project would "create significant noise and other safety incompatibilities which could lead to restrictions on the use of the Oceano County Airport or to its eventual closure."

2. Applicable Policies

The appellants cite Coastal Act Section 30211 which states: "Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation."

3. Analysis of Consistency with Applicable Policies

While the Oceano airport is located in the coastal zone, it is located inland from the beach and does not provide direct access to the shoreline. The proposed hotel project is located directly in front of the sandy beach with access provided by a major public roadway. The Commission recognizes that there may be some consequences to aviation associated with the proposed development. However, the project is a LCP priority visitor-serving use located in an area envisioned for this type of commercial development, and will support coastal recreation by providing overnight accommodations.

To address concerns that the project will create noise and safety compatibilities leading to restrictions or closure of the Oceano airport, the project has been conditioned to limit noise levels and ensure provisions of the California Noise Insulation Standards are met with respect to aircraft and/or airport noise. The County has also conditioned the project to include a variety of measures to limit exposure to excessive noise and safety hazards. These include noise reduction devices like interior doors for sleeping areas, solid exterior doors and "sound-rated" windows, acoustical treatment to exterior vents, and inclusion of a mechanized air circulation system to allow ventilation when windows are closed. In addition, the County conditioned the applicant to record an Avigation Easement reviewed and approved



by County Counsel. These requirements reduce the likelihood that the project will interfere with recreational opportunities provided by the Oceano Airport.

4. Public Access and Recreation Conclusion

In conclusion, the appellant's contentions that the project interferes with access to the coast and could lead to restrictions on the use of the Oceano County Airport or to its eventual closure does not raise a substantial issue.

5. Conditions of Approval for De Novo Permit

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Scope of Permit.** This permit conditionally authorizes:
 - a) Demolition of the existing concrete structure.
 - b) Construction of a 16-unit hotel and a manager's unit.
 - c) Construction of an underground parking lot accommodating a minimum of 20 spaces.
 - d) Native plant landscaping and site improvements consistent with conditions below.
2. **Final Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of Final Project Plans to the Executive Director for review and approval. The Final Project Plans shall be consistent with the following requirements:



- (a) **Dune Buffer Area.** The Final Project Plans shall provide a minimum onsite dune buffer area of 50 feet measured from the northern property line to the interior of the parcel. Development is prohibited within the dune buffer area, except for uses allowed pursuant to Special Condition 4 of this permit. The Final Project Plans shall clearly identify and label the dune buffer area in site plan view.
- (b) **Building Height.** Building height shall not exceed 35 feet above average natural grade.
- (c) **Underground Parking.** Plans shall indicate the dimensions and location of 20 underground parking spaces.
- (d) **Road Improvements.** Final Plans shall clearly delineate and label the Smith Avenue, Strand Avenue, and Strand Way public road right-of-ways. Development is prohibited within the Smith Avenue and Strand Avenue right-of-ways.
- (e) **Exterior Design Elements.** Exterior elevations and building elements shall be consistent with the Design Guidelines for Commercial Retail areas as specified in the Oceano Specific Plan. The applicant shall submit a final color board and elevations for review and approval of the Executive Director. The exterior elevations shall identify all finished materials. All exterior finishes shall consist of earthen tone colors that blend with the surrounding dune environment. Mechanical equipment (i.e. electrical supply panels, air conditioning and heating devices, water and gas meters, pad mounted transformers, satellite dishes, etc.) is prohibited in the dune buffer area, and shall not be visible from public views unless they are completely screened by walls and/or landscaping, or installed in underground vaults. All detached structures and other site improvements, including but not limited to, the points of ingress and egress, parking areas, loading areas, turnarounds, sidewalks, crosswalks, trash and recycling enclosures, utility connections, easements, public access paths, retaining walls, foundations, and benches must be shown on the final plans, including elevations.
- (f) **Lighting.** Plans shall identify the height, type, location and intensity of all exterior lighting. Exterior lighting shall be limited to that which is necessary to illuminate driveways, pathways, and entrances to structures. All lighting shall low-level light sources and shall be downward directed and designed so that it does not produce any light or glares off-site. All lighting fixtures shall be shielded so that neither the lamp nor the related reflector interior surface is visible off-site. Light hoods shall be dark colored.

The Permittee shall undertake development in accordance with the approved Final Project Plans. Any proposed changes to the approved Final Project Plans shall be reported to the Executive Director. No changes to the approved Final Project Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

3. **Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Construction Plan to the Executive Director for review and approval. The Construction Plan shall identify all measures to be taken to protect the dunes to the maximum extent feasible, and shall, at a minimum, include:



(a) Construction Fencing. The perimeter of the area subject to construction activity shall be limited to the exposed paved areas of the site. No construction shall occur in the area of sandy dunes on the northern portion of the property and this area shall be delineated by construction fencing. The location of all such fencing must be clearly identified on the construction plan and the area enclosed designated as the construction zone. The construction zone fencing shall be maintained in good working order for the duration of the construction. No construction activities shall take place, and no equipment or material storage shall occur, outside of the established construction zone. CONSTRUCTION SHALL NOT COMMENCE UNTIL ALL CONSTRUCTION ZONE FENCING IS COMPLETELY INSTALLED AND OPERATIONAL.

(b) Biological Monitor. A qualified biological monitor shall be present at the site as follows:

- (1) Prior to construction, the monitor shall survey the site and immediately adjacent areas for the presence of Western snowy plover, California least tern, and silvery legless lizard. The biologist shall submit a letter to the Executive Director verifying that s/he has been retained and shall provide verification that the area proposed for disturbance does not contain nesting sites or individuals of the species. If nests or juveniles are found, all activity shall be postponed until the nest has hatched, and all juveniles have left the area.
- (2) During construction, the monitor shall make weekly site visits to survey the site and immediately adjacent areas for the presence of species identified in b (1) above. The monitor shall verify that all construction zone fencing is in place and functioning as intended. Any repair or maintenance to the fencing deemed necessary by the monitor shall be completed under the monitor's supervision.
- (3) After all construction activities are completed, the construction zone fencing shall be removed under the supervision of the monitor.

The biological monitor shall have the authority to halt all or some construction activities and/or modify all or some construction methods as necessary to protect habitat and individual sensitive species. The biological monitor shall complete monitoring reports for each day that the monitor is present that, at a minimum, indicate the date and time of work, weather and other site conditions, the monitoring biologist's name, project activity/progress, any listed species observed, any measures taken to repair and/or maintain protective fencing, and any construction modifications required to protect habitat. These reports shall be compiled and submitted to the Executive Director upon cessation of construction as part of a construction monitoring report.

(c) Water Quality BMPs. All erosion control/water quality best management practices to be implemented during construction and their location shall be noted. Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction zone to prevent construction-related runoff, sediment, and/or debris from entering into the dunes, beach, and/or the Pacific Ocean, and any existing storm drain inlets. Provisions shall be made for stockpiling and covering any graded soils, equipment, and/or materials. A wet weather contingency plan shall be identified that clearly states what actions will be taken in the event of precipitation events to avoid off-site impacts due to runoff emanating from the construction zone. ALL EROSION, SEDIMENT, AND OTHER WATER QUALITY CONTROLS SHALL BE IN PLACE PRIOR



TO THE COMMENCEMENT OF CONSTRUCTION AS WELL AS AT THE END OF EACH DAY.

- (d) Good Housekeeping.** The construction site shall maintain good construction site housekeeping controls and procedures, including: (1) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all dewatering operations shall include filtration mechanisms; (2) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage or existing drain inlet; (3) concrete rinsates shall be collected and properly disposed of off-site and they shall not be allowed to enter any natural drainage areas or existing drain inlet; and (4) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather.
- (e) Work Schedule.** All work shall take place during daylight hours with the following exception: any construction that occurs after sunset shall be limited to interior (of structures) work and shall be subject to the same lighting parameters as established for the completed structure by Special Condition 2.

All requirements of this condition above shall be enforceable components of this coastal development permit. All requirements of this condition shall be specified as plan notes on the Construction Plan, and the plan notes shall indicate that they shall apply for the duration of construction of the approved development. The Permittee shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

4. Dune Buffer Area Restrictions.

- A. No development, as defined in section 30106 of the Coastal Act shall occur in the Dune Buffer Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive director issues for this permit except for:
1. Dune landscaping and stabilization activities conducted in accordance with the Dune Landscape /Stabilization Plan approved by special condition 6 of this permit.
 2. Low intensity public access improvements (e.g. walking paths and/or dune boardwalks). Any low intensity public access improvements must be submitted for review and approval by the Executive Director.
 3. Building maintenance activities including, but not limited to, window washing, painting, trash and debris removal.



4. Sand management activities to address windblown sand only if conducted in accordance with special condition 7 of this permit.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE THIS PERMIT (NOI), the Applicant shall submit for review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described in special condition 2(a) of this permit.

5. **Drainage, Erosion, and Sedimentation Control.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Applicant shall submit, for Executive Director review and approval, two sets of Drainage, Erosion, and Sedimentation Control Plans and that incorporate the following provisions:

Implementation of Best Management Practices During Construction. The Drainage and Erosion Control Plans shall identify the type and location of the measures that will be implemented during construction to prevent erosion, sedimentation, and the discharge of pollutants during construction. These measures shall be selected and designed in accordance with the California Storm Water Best Management Practices Handbook and the criteria established by the San Luis Obispo County Resource Conservation District. Among these measures, the plans shall limit the extent of land disturbance to the minimum amount necessary to construct the project; designate areas for the staging of construction equipment and materials, including receptacles and temporary stockpiles of graded materials, which shall be covered on a daily basis; provide for the installation of silt fences, temporary detention basins, and/or other controls to intercept, filter, and remove sediments contained in the runoff from construction, staging, and storage/stockpile areas. The plans shall also incorporate good construction housekeeping measures, including the use of dry cleanup measures whenever possible; collecting and filtering cleanup water when dry cleanup methods are not feasible; cleaning and refueling construction equipment at designated off site maintenance areas; any the immediate clean-up of any leaks or spills.

The plans shall indicate that PRIOR TO THE COMMENCEMENT OF GRADING, the applicant shall delineate that the approved construction areas with fencing and markers to prevent land-disturbing activities from taking place outside of these areas.

Post Construction Drainage. The drainage plan shall identify the specific type, design, and location of all drainage infrastructure and Best Management Practices (BMPs) necessary to ensure that post construction drainage from the project, including runoff from the roof, driveways, parking areas and other impervious surfaces, does not result in erosion, sedimentation, or the degradation of coastal water quality. The capacity of drainage features and BMPs shall be adequate to treat, infiltrate or filter the amount of storm water runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. All drainage features shall be located outside of sensitive habitat areas, and shall be limited in size and footprint to the minimum necessary to achieve effective drainage and erosion control.



The applicant shall be responsible for implementing and maintaining drainage, erosion, and sedimentation control measures and facilities for the life of the project. This shall include performing annual inspections, and conducting all necessary clean-outs, immediately prior to the rainy season (beginning October 15), and as otherwise necessary to maintain the proper functioning of the approved system.

The Permittee shall undertake development in accordance with the approved Plans. Any proposed changes to the approved Plans shall be reported to the Executive Director. No changes to the approved Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

- 6. Dune Landscape/Stabilization Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit for review and approval of the Executive Director, two copies of a Dune Landscape and Stabilization Plan. Dune landscaping and stabilization is limited to the sandy dune formation on the Applicant's property and shall not occur within the Smith Avenue right-of-way. The plan shall include eradication of non-native species on the property and the establishment of native dune vegetation using seeds collected from native species found in the foredune environment within Oceano and the surrounding area. The plan shall describe and provide for initial maintenance, monitoring, establishment of success criteria, and replacement of vegetation as necessary, for a period of five years after initial installation. Monitoring reports, submitted to the Executive Director for review and approval, are required annually for a period of five years after initial installation.

The Dune Landscape and Stabilization Plan shall be reviewed by the California Department of Parks and Recreation and the California Department of Fish and Game. Any comments received by these agencies shall be addressed to the satisfaction of the Executive Director of the Coastal Commission. All dune landscape and stabilization activities shall be carried out in accordance with the approved plan.

- 7. Sand Management Plan.** Any future proposal to remove sand from site or move sand adjacent to the site shall be subject to the approval of a separate Coastal Development Permit or amendment to this permit. The application to conduct sand moving activities shall include a Sand Management Plan that: identifies the location, method, and frequency of all sand removal activities; addresses potential habitat impacts associated with sand moving activities; and, include authorizations for such activities by all affected property owners.
- 8. Archaeological Monitor.** A qualified archaeological monitor and Native American representative approved by the Executive Director PRIOR TO THE COMMENCEMENT OF CONSTRUCTION shall be present during any construction or pre-construction activities that involve ground disturbance. Should archaeological resources be discovered at the project site during any phase of construction, the Permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist in coordination with interested Native Americans, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report



verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation

- 9. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant’s entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
- 10. County Conditions.** Except for conditions 15, 16, 18, 25(b), 25(c), 25(d), and 26, all County conditions become conditions of this coastal development permit. All conditions of San Luis Obispo County’s approval pursuant to planning authority other than the Coastal Act continue to apply (e.g., conditions # 32, 33, 42, 43, and 44).

6. De Novo Permit Findings and Declarations

By finding substantial issue in terms of the project’s conformance with the certified LCP, the California Coastal Commission takes jurisdiction over the coastal development permit for the proposed project. The standard of review remains the certified LCP and public access policies of the Coastal Act. The substantial issue findings above are incorporated herein.

A. Project Location and Description

The project site is located adjacent to coastal dune habitat primarily owned by State Parks. The dunes immediately adjacent and to the north of the project site are unstable and in many areas devoid of vegetation which causes windblown sand to accumulate on the project site. The northern property line has been completely covered by encroaching beach dunes. A 40-foot wide unimproved road right-of-way (Smith Avenue) is located immediately adjacent to the northern property boundary and within the dune habitat.

The 11,800 square foot project site is located on the inland side of the terminus of Strand Avenue, approximately 200 feet north of Pier Avenue, in the Community of Oceano. Pier Avenue is two-lane road used by residents and visitors accessing the nearby Pismo State Beach/Oceano Dunes Recreational Vehicular Area (ODSVRA). Commercial uses (a beach dune buggy rental and repair shop is just south of the site), beach vacation rentals, condominiums, campgrounds, single-family residences, Pismo State Beach, and the Oceano Dunes State Vehicular Recreation Area characterize the surrounding area.



The proposed project consists of the construction of a 16-unit three-story hotel, underground parking and associated site improvements. An asphalt surface parking lot and a vacant single-story building cover the majority of the existing site. The existing building and asphalt parking lot will be removed prior to construction. The underground parking facility would be accessed by Strand Way at the southeastern corner of the property.

B. Coastal Development Permit Findings

1. Environmentally Sensitive Habitat Areas (ESHA)

a. Applicable Policies

The LCP is very protective of sensitive resource systems such as dunes and other environmentally sensitive habitat areas (ESHA). The following LCP policies and ordinances are relevant to the protection of environmentally sensitive dune habitat adjacent to the project site:

Policy 1 - Land Uses Within or Adjacent to Environmentally Sensitive Habitats: *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resource shall be allowed within the area. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

Policy 2 – Permit Requirement: *As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures (where appropriate), and b) a program for monitoring and evaluating the effectiveness of mitigation measures where appropriate. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

Policy 27 – Protection of Terrestrial Habitats: *Designated plant and wildlife habitats are environmentally sensitive habitat areas and emphasis for protection should be placed on the entire ecological community. Only uses dependent on the resource shall be permitted within the identified sensitive habitat portion of the site.*

Development adjacent to environmentally sensitive habitat areas and holdings of the State Department of Parks and Recreation shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.07.176 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]

Policy 34 - Protection of Dune Vegetation: *Disturbance or destruction of any dune vegetation shall be limited to those projects which are dependent upon such resources where no feasible alternatives exist and then shall be limited to the smallest area possible. Development activities*



and uses within dune vegetation shall protect the dune resources and shall be limited to resource dependent, scientific, educational and passive recreational uses. Coastal dependent uses may be permitted if it can be shown that no alternative location is feasible, such development is sited and designed to minimize impacts to dune habitat and adverse environmental impacts are mitigated to the maximum extent feasible.

Revegetation with California native plant species propagated from the disturbed site or from the same species at adjacent sites shall be necessary for all projects. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD]

CZLUO Section 23.07.170 – Environmentally Sensitive Habitats:

d. Development standards for environmentally sensitive habitats:

- 1) New development within or adjacent to the habitat shall not significantly disrupt the resource.*
- 2) New development with the habitat shall be limited to those uses that are dependent upon the resource.*
- 3) Where feasible, damaged habitats shall be restored as a condition of development approval.*
- 4) Development shall be consistent with the biological continuance of the habitat.*
- 5) Grading adjacent to Environmentally Sensitive Habitats shall conform to the provision of Section 23.05.034c (Grading Standards).*

CZLUO Section 23.07.176 – Terrestrial Habitat Protection: *The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.*

a. Protection of vegetation: *Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Developments shall be sited to minimize disruption of habitat*

b. Terrestrial habitat development standards:

- 1) Revegetation..** *Native plants shall be used where vegetation is removed.*
- 2) Area of disturbance.** *The area to be disturbed by development shall be shown on a site plan. The area which grading is to occur shall be defined on site by readily-identifiable barriers that will protect the surrounding native habitat areas.*
- 3) Trails.** *Any pedestrian or equestrian trails through the habitat shall be shown on the site plan and marked on the site. The biologist's evaluation required by Section 23.07.170a shall also include a review of impacts on the habitat that may be associated with trails.*

In addition to the policies and ordinances listed above, the Oceano Specific Plan contains relevant development standards for the Pier Avenue and Beach Area:



Standard 9- Pier Avenue & Beach Area: *New development within or adjacent to environmentally sensitive habitat areas (ESHA's) must comply with the ESHA resource protection policies of the LCP. Study empty lots in coastal habitats. Clarify ESHA boundaries.*

b. Dune Habitat Protection

Coastal dunes are a type of terrestrial habitat (TH) under the LCP. The LCP designates coastal dune TH as an environmentally sensitive habitat area (ESHA). Development adjacent to ESHA's and holdings of the State Department of Parks and Recreation must be sited and designed to prevent impacts that would significantly degrade such areas and must be compatible with the continuance of such habitat areas (Policy 29). The LCP protects dune ESHA from development impacts by, among other things, limiting disturbance and removal of vegetation, and requiring a buffer from the identified resource (Oceano Specific Plan).

Development Adjacent to and in Coastal Dunes

The proposed project includes a 3-story motel, underground parking garage, and associated hardscape adjacent to State Department of Parks and Recreation property. The project site is 11,800 square feet and is entirely covered by the existing structure and asphalt surface parking lot. Drifting beach dunes cover the northern property boundary (see Exhibit H). According to the Initial Study prepared for the project, this dune area is roughly 1,300 square feet. An aerial photo included in the applicant's *Preliminary Ecological Constraints Analysis* (LFR Levine Fricke 2003) shows this dune area varying in width from approximately 20 to 40 feet along the property line (see Exhibit G.) As proposed, this dune formation would be removed to accommodate the commercial project. Since the site hasn't been used for many years, the project will introduce significant new commercial structures, noise, lights, activities, and urban runoff immediately adjacent and into dunes. The purpose of the LCP-required buffer is to help reduce these types of edge effects on the existing dune habitat.

Coastal Dune System as ESHA

The Oceano Dunes system is considered an environmentally sensitive habitat area (ESHA) because coastal dunes are an extremely limited environmental resource of statewide significance. The Commission has identified coastal dunes, even degraded dunes, as ESHA in recognition of the fact that both the physical habitat and the associated natural community is rare in California and easily disturbed by human activities. Historically, the Commission has placed high priority on the protection and preservation of dune systems. On the Central Coast, this includes the Nipomo Dunes, Asilomar Dunes, and the Del Monte Dunes. The significance of the overall natural resource values of Oceano Dunes complex is well recognized, as is the potential to restore and enhance these values in degraded areas.

Oceano Dunes is a dynamic system where wind shifts the shape of the ground, rainfall rapidly percolates out of reach, and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. This dynamic system allows specially adapted dune species a competitive advantage over other typical coastal bluff flora found along the central coast of California. Therefore, the overall growing area ("habitat") needed over the long run is vastly larger than the area occupied by the plants at any one given time. This also explains why the entire dune surface, not just the locations where the plants (and animals) are found in any one particular year or time must be considered ESHA. As the Commission has often observed, developed areas of dune systems like Oceano frequently revert back to dune habitat (self-restore) over



time when development is removed or not maintained. In some areas of Oceano, such as the proposed development site, dunes are being formed on paved streets, parking lots, and already developed areas.

In summary, the property lies within a geographical area known for its occurrence of native plant and animal species restricted to coastal dune systems, including those listed as endangered or threatened under Federal and/or State regulations. These coastal dunes are communities designated as high priority in the California Department of Fish and Game (CDFG) Inventory. Coastal dunes are also recognized as environmentally sensitive in the San Luis Obispo County's Land Use Plan. Therefore, native dunes meet the definition of Environmentally Sensitive Habitat Area (ESHA) under the San Luis Obispo County certified LCP.

ESHA Identification on the Project Site

The Oceano Specific Plan (Standard 9) requires that ESHA boundaries be studied and clarified in the Pier Avenue and Beach Area. In this case, the northern property line coincides with the ESHA boundary. This is primarily due to the fact that the property is currently paved with asphalt all of the way to the northern property line. The northern edge of the site is heavily trafficked by off-road vehicles, humans, and domestic animals. In the northeast corner of the property there is a rubbish pile consisting of old tires, discarded lumber scraps, and trash. The ecological constraints analysis describes the encroaching dunes on top of the applicant's asphalt parking lot as "highly disturbed". European beach grass and iceplant make up the majority of vegetative cover of the dunes on top of the paved surface. For these reasons, the paved portion of the property is not ESHA.

In contrast, the California State Parks property and the Smith Avenue right-of-way (an undeveloped paper street) immediately north of the site is ESHA. The few clearings of open sand are mostly attributable to unofficial pedestrian footpaths. Blochman's leafy daisy (*Erigeron blochmaniae*) was observed on State Park property to the north of the site and within the Smith Avenue right-of-way directly adjacent to the property. This plant is a perennial herb that is included on the CNPS 1B List for plants considered rare, threatened, or endangered in California and elsewhere. One stem branch was observed on the property fringe and a large patch (approximately 25 feet by 2 feet) was identified roughly 40 feet from the property boundary. Two large (7 to 9 inches tall) individuals of Dunedelion (*Malcothrix incana*) were observed growing on State Parks property. Dunedelion is a perennial herb on the CNPS 4 Watch List for plants of limited distribution. The presences of these plant species are indicative of the foredune and native dune scrub habitat immediately adjacent to the site.

Three special-status wildlife species are known to occur in the vicinity of the project site. Two wildlife bird species that have received the most attention in the Oceano Dunes are the Western snowy plover (*Charadrius alexandrinus nivosus*), and the California least tern (*Sterna antillarum brown*). Both birds are federally listed species. The third animal known to occur in the vicinity of the project site is the silvery legless lizard (*Anniella pulchra pulchra*). The silvery legless lizard is a California Department of Fish and Game (CDFG) Species of Special concern. Although the project site does contain potentially suitable habitat for this species, no individuals of these species were observed during the site surveys.

While there may not be any endangered plants or animals in the building site presently, the nature of the dune habitat is such that they appear at different locations and times. Even though the dune area on the



applicant's property has been substantially disturbed by historic development and human activity, there are large swaths of undisturbed dunes with higher quality vegetation, and thus habitat connectivity, to the north of the property.

Therefore, the dunes covering the paved area of the property are not considered ESHA. However, they are considered degraded habitat worthy of protection, as they have the potential to be restored and sustain the endangered plants and animals listed above. They also play an important role in buffering the adjacent sensitive dune habitat from urban and recreational uses, as discussed below.

c. ESHA Impact Analysis

As described previously, the project is adjacent to State Parks dune ESHA. Heavily disturbed dune habitat is present on approximately one quarter of the property along the northern property line. Although the dune habitat on the site is degraded and no sensitive species were identified, sensitive plants were observed in close proximity, and habitat potentially suitable for special-status species exist on the project site.

Structural development within this area will significantly disrupt the habitat. As with other commercial developments in the Pier Avenue and beach area of Oceano, the proposed development will have on-going impacts to the ecological functioning of the dune complex. Such impacts include covering and fragmentation of habitat, prevention of hydrological dynamics, building maintenance activities (e.g. irrigation overspray and herbicide/pesticide drift, power washer/window washer blowback, sand moving, painting, etc.), visitor trampling around occupied buildings, and shadowing caused by the structure itself, which are inconsistent with protection of coastal dune ESHA. Furthermore, any commercial development brings with it noise, lights, pets, and general human activity that is not conducive to fostering habitat values. The lights that would be visible from the proposed motel at night might also have some impact on nighttime foraging and movement of species.

In addition to ongoing ESHA impacts, the proposed project would result in temporary negative impacts to surrounding ESHA areas during construction. The staging of construction equipment onsite, site preparation, and overall construction activities and human presence are expected to adversely affect species and their habitat outside of the construction zone. Although direct construction impacts are expected to be temporary, such construction can have significant dune impacts on the short-term productivity of the affected habitat.

d. Buffers

Buffers function as important transition zones between development and adjacent habitat areas, serving to protect the habitat from the direct effects of nearby disturbance. Buffer areas provide protection for habitat from adjacent development in a number of ways (e.g., sheer distance, buffer configuration, topographic changes, vegetation in the buffer, fences at buffer edges, etc.), where the methods chosen depend in part on the desired functions of the buffer (e.g., reducing human impacts, preserving habitat, water quality filtration, etc.). When intensive urban uses are proposed adjacent to habitat areas (such as the commercial hotel project in this case), a primary buffering method is to provide adequate distance so as to limit direct contact and reduce the conveyance of human-generated impacts (such as noise, lights, movements, odors, debris, and other edge effects). Vegetation planted or present within the buffer can help to reduce these edge effects, and thereby minimize the necessary buffer width. Depending upon



their design, buffers can also be a functional part of the ESHA acting as a transition zone from the more sensitive to less sensitive parts of a site. By minimizing disturbance to the resource from adjacent development, and by providing transitional habitat areas, buffers contribute to the health and vitality of functioning habitat areas such as the dunes in this case.

e. Project Modifications to Result in an Approvable Project

The proposed project would place a large commercial motel directly adjacent to environmentally sensitive State Park dunes. Project modifications are necessary if a project is to be approved at this location consistent with LCP ESHA standards. An approvable project must avoid significant disruption to the adjacent dunes (Policies 1 and 2), and must be sited and designed to prevent impacts that would degrade such areas (LCP Policy 29). Disturbance or destruction of any dune vegetation shall be limited to the smallest area possible (LCP Policy 36) and a buffer area must be established between the development and the adjacent dune complex (Oceano Specific Plan).

Therefore, to avoid significant disruption of natural habitat values, it is appropriate and necessary to require a dune buffer. Special Condition 2 requires that a 50-foot dune buffer area be established on the property through submittal of final project plans. First, establishing a dune buffer of this size would avoid the direct removal of dunes, disturbed or otherwise. As described previously, dunes have encroached onto the property up to 40 feet in some areas. Second, a buffer of this width is needed to implement a viable dune landscaping and stabilization program, as necessary to shield the adjacent sensitive habitats from disruption by the project. A dune buffer of 50 feet also allows space for ongoing building maintenance activities, such as sand moving, window washing, painting, etc, to occur without further impacting adjacent habitat areas. A 50-foot buffer width will provide sufficient space for a "Bobcat excavator" or some other form of equipment to move and recontour blown sand. Commission staff biologist John Dixon has reviewed the relevant biological information and also recommends a minimum buffer of 50-feet measured from the property line to the interior of the property.

In addition, Special Condition 3 requires the applicant to submit a Construction Plan prior to issuance of the CDP. The plan must include protective construction fencing, biological monitoring and reporting, and includes "good housekeeping" practices during construction.

Appropriate mitigation for the impact to dune habitat in Oceano includes the preservation of buffer areas and long-term maintenance of these areas. Therefore, Special Condition 8 requires that the buffer area on the property be maintained, subject to a deed restriction that prohibits uses that are inconsistent with habitat protection and dune stabilization. In conjunction with this requirement, Special Condition 6 requires that the dunes on the property be landscaped and stabilized with native plantings appropriate to the Oceano dune complex. In addition, Special Condition 7 identifies that any future proposal to relocate or move sand on or adjacent to the project site is subject to the approval of a separate coastal development permit or amendment to this permit, and must be designed and carried out in a manner that protects surrounding habitats. The conditions of this permit will help restore dune habitat in the immediate project area as well as to minimize disruption to adjacent dune habitat throughout the life of the development. These conditions shall run with the land in order to ensure that future owners are aware of the constraints associated with this site.

f. ESHA Conclusion



The project, as conditioned, is consistent with the LCP because it avoids significant disruption to sensitive dune habitat; minimizes disturbance of dune vegetation and landforms; provides a setback and buffer necessary to prevent the development from resulting in a significant disruption of ESHA; and enhances the remainder of the degraded habitat on site by implementation of a dune landscape and stabilization plan. In addition, a deed restriction is required assuring resource protection within the dune buffer area. Only as conditioned is the project consistent with the dune ESHA protection provisions of the LCP.

2. Visual and Scenic Resources

a. Applicable Policies

Policy 1 – Protection of Visual and Scenic Resources: Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 2 – Site Selection for New Development: Permitted development shall be sited so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors. In particular, new development should utilize slope created “pockets” to shield development and minimize visual intrusions. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 5 – Landform Alterations: Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUENT TO SECTION 23.05.034 OF THE CZLUO.]

Policy 10 – Development on Beaches and Sand Dunes: Prohibit new development on open sandy beaches, except facilities required for public health and safety (e.g., beach erosion control structures). Limit development on dunes to only those uses which are identified as resource dependent in the LCP. Require permitted development to minimize visibility and alterations to the natural landform and minimize removal of dune stabilizing vegetation [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

CZLUO Section 23.05.034(c) – Grading adjacent to Environmentally Sensitive Habitats. Grading shall not occur within 100 feet of any Environmentally Sensitive Habitat Area as shown on the Land use Element:

...

(2) Within an urban service line when grading is necessary to locate a principally permitted use and where the approval body can find that the application of the 100-foot setback would render the site physically unsuitable for a principally-permitted use. In such cases, the 100-foot setback shall only be reduced to a point where the principally-permitted use, as modified as much as practical from a design standpoint, can be located on the site. In no case shall grading occur closer than 50 feet from the Environmentally Sensitive Habitat or as allowed by planning area



standard, whichever is greater.

CZLUO Section 23.05.034(d) – Landform alteration within public view corridors. *Grading, vegetation removal and other landform alterations shall be minimized on sites located within areas determined by the Planning Director to be a public view corridor from collector or arterial roads. Where feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance.*

b. Consistency Analysis

The LCP is protective of coastal zone visual resources, and specifically protective of the views to and along the ocean. Wherever possible, development is to “emphasize locations not visible from major public view corridors.” Landform alterations within public view corridors are to be minimized and finished surfaces are to blend with the natural terrain (Policy 5). LCP Policy 5 is implemented by CZLUO Section 23.05.034 related to landform alteration, which states in relevant part that in no case shall grading occur closer than 50 feet from sensitive habitat areas. The LCP likewise is protective of new development on sand dunes, requiring development to “minimize removal of dune stabilizing vegetation” (LCP Policy 10). These LCP policies taken together require that the impacts of new development within public viewsheds be minimized, and that new development within and adjacent to unique features of the landscape such as coastal dunes be integrated into the existing beach aesthetic. Therefore, questions of public view protection and dune landform alteration are central to the review of this project.

The Applicant’s site is one of the most visually prominent parcels in the Pier Avenue and Beach Area of Oceano. The site represents the northwestern “edge” of potentially developable land in the commercial area of Pier and Strand Avenues. The project would be highly visible from Pismo State Beach, Pier Avenue, and surrounding dune areas. In this case, an existing concrete block commercial building and asphalt parking lot has occupied this location for over 30 years. The new hotel building that would be constructed on the site would be three stories with a maximum building height of 35 feet. The parking garage would be located underground. Because the proposed project utilizes the entire parcel, the northern wall of the hotel would be constructed into the backside of the dune formation on the applicant’s property. In sum, the project would introduce a large vertical wall and structure into the dunes where none exists now.

To be consistent with the LCP a number of conditions are required. To avoid grading, vegetation removal, and landform alteration consistent with the LCP, Special Condition 2 requires final project plans showing the building set back from this property edge to avoid removal of the onsite dune formation. Not only will this allow the project to preserve the dune landform, but it will also avoid removal of dune stabilizing vegetation. With this condition contours of the finished surface will blend with adjacent natural terrain and achieve a consistent grade and natural appearance consistent with the LCP

c. Visual Conclusion

Removing the existing abandoned building and replacing it with a larger and taller structure of a different design will change the scenic qualities of the area. The proposed motel would increase massing visible from Pier Avenue and Pismo State Beach and will alter the natural dune landform on the



northern edge of the property. Development of the motel in its proposed location would require grading, vegetation removal, and dune landform alterations contrary to the scenic and visual protection policies required by the LCP. Therefore, the conditions of this permit require all elevations and exterior design elements to be consistent with the recently adopted Design Guidelines for commercial retail areas as specified in the Oceano Specific Plan. In addition, exterior finishes on the building are to be earthen tone colors that blend with the surrounding dune environment. Finally, to assure the consistency of the project with the visual resource provisions of the LCP, the conditions of approval establish a dune setback/buffer area necessary to avoid alteration of dune landforms, protect dune habitat areas that contribute to the scenic quality of the area, and allow for development that will blend in with adjacent natural terrain and achieve a consistent grade and natural appearance. Only as conditioned is the project consistent with the LCP.

3. Water Quality

a. Applicable Policies

Policy 9 for Coastal Watersheds: *Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based in evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site-specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*

Policy 10 for Coastal Watersheds: *Site design shall ensure that drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*

b. Consistency Analysis

Stormwater infrastructure is lacking in and around the project area. During the early stages of urbanization in Oceano it was overlooked because of the high infiltration rates of the sandy soils that tended to naturally dispose of runoff. However, as urbanization has increased, the capabilities of the underlying soil to absorb urban runoff have diminished.

Although a drainage plan is not included with the project, it is expected that site drainage would be collected and discharged toward the fronting streets, flowing onto the sandy surface and eventually to the beach and Pacific Ocean. Runoff from the site would be expected to contain typical runoff elements associated with urban commercial development, including some water and pollutant accumulation in the underground parking lot. Urban runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics



(such as pesticides and herbicides).¹ Urban runoff can also alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms.

At a minimum, urban runoff pollutants would be added into the sandy dune and beach soils around the project site. Depending on the degree to which the sandy soils neutralized these constituent pollutants, remaining pollutants would make their way into the Pacific Ocean adversely impacting marine water quality.

c. Water Quality Conclusion

In sum, the project would generate typical urban runoff (including vehicular wastes from the underground parking lot). That runoff would likely be directed off site. In other words, the proposed project relies on offsite areas to filter and treat typical pollutants generated by the project. These areas would be degraded proportionally as a result. This is inappropriate and inconsistent with the LCP's water quality requirements. Therefore, Special Condition 5 is necessary for LCP conformance. Specifically, this condition requires that adequate construction BMPs are applied to prevent construction-related runoff and debris from degrading the beach area, and permanent drainage BMPs are required to control the volume, velocity and pollutant load of stormwater and other runoff leaving the developed site and to ensure that: all site drainage features and/or structures (e.g., pipes) are confined within the disturbance area and are prohibited in the dune ESHA areas; post-development peak runoff rates and volumes are maintained at levels similar to, or less than, pre-development conditions; all runoff is filtered and treated prior to its use for on-site irrigation or infiltration, or its discharge off-site; spill response materials are maintained on-site; and all drainage system elements are permanently operated and maintained (see special condition 5)

With these conditions, the project conforms to LCP marine resource protection requirements.

4. Archeology

a. Applicable Policies

Archaeology Policy 1: *The County shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD].*

Archaeology Policy 4: *Development shall require a preliminary site survey by a qualified archaeologist knowledgeable in Chumash culture prior to a determination of the potential environmental impacts of the project. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT*

¹ Pollutants of concern found in urban runoff include, but are not limited to: sediments; nutrients (nitrogen, phosphorous, etc.); pathogens (bacteria, viruses, etc.); oxygen demanding substances (plant debris, animal wastes, etc.); petroleum hydrocarbons (oil, grease, solvents, etc.); heavy metals (lead, zinc, cadmium, copper, etc.); toxic pollutants; floatables (litter, yard wastes, etc.); synthetic organics (pesticides, herbicides, PCBs, etc.); and physical changed parameters (freshwater, salinity, temperature, dissolved oxygen).



TO SECTION 23.07.106 OF THE CZLUO].

Archaeology Policy 6: *Where substantial archaeological resources are discovered during construction of new development, or through non-permit related activities (such as repair and maintenance of public works projects) all activities shall cease until a qualified archaeologist knowledgeable in the Chumash culture can determine the significance of the resources and submit alternative mitigation measures. [THIS POLICY SHALL BE IMPLEMENTED PUSUANT TO SECTION 23.05.140 AND 23.07.106 OF THE CZLUO.]*

CZLUO Section 23.07.104 states:

23.07.104 Archaeologically Sensitive Areas:

To protect and preserve archaeological resources, the following procedures and requirements apply to development within areas of the coastal zone identified as archaeologically sensitive.

a. Archaeologically sensitive areas. The following areas are defined as archaeologically sensitive:

(1) Any parcel within a rural area which is identified on the rural parcel number list prepared by the California Archaeological Site Survey Office on file with the county Planning Department.

(2) Any parcel within an urban or village area which is located within an archaeologically sensitive area as delineated by the official maps (Part III) of the Land Use Element.

(3) Any other parcel containing a known archaeological site recorded by the California Archaeological Site Survey Office.

b. Preliminary site survey required. Before issuance of a land use or construction permit for development within an archaeologically sensitive area, a preliminary site survey shall be required. The survey shall be conducted by an archaeologist knowledgeable in Chumash Indian culture and approved by the Environmental Coordinator. The purpose of the preliminary site survey is to examine existing records and to conduct a preliminary surface check of the site to determine the likelihood of the existence of resources. The report of the archaeologist shall be submitted to the Planning Department and considered in the evaluation of the development request by the applicable approval body.

c. When a mitigation plan is required. If the preliminary site survey determines that proposed development may have significant effects on existing, known or suspected archaeological resources, a plan for mitigation shall be prepared by the archeologist. The purpose of the plan is to protect the resource. The plan may recommend the need for further study, subsurface testing, monitoring during construction activities, project redesign, or other actions to mitigate the impacts on the resource. The mitigation plan shall be submitted to and approved by the Environmental Coordinator, and considered in the evaluation of the development request by the applicable approval body.

d. Required finding. A land use or construction permit may be approved for a project within an



archaeologically sensitive area only where the applicable approval body first finds that the project design and development incorporates adequate measures to ensure protection of significant archeological resources.

e. Archeological resources discovery. In the event archeological resources are unearthed or discovered during any construction activities, the standards of Section 23.05.140 of this title shall apply.

b. Consistency Analysis

Archaeology Policies 1, 4, and 6 require surveys within designated archaeologically sensitive areas, protection of any resources that were identified, and protection of resources discovered during construction.

The project site is within an LCP designated Archaeological Sensitive (AS) combining designation area. A surface survey was performed as part of the Applicant's Initial Study. According to the study, no resources were identified within the proposed project site. However, the project site is currently paved and buried resources may be present under the existing asphalt paving. Although the possibility of subsurface archaeological resources are considered low due to the absence of surface resources, buried archaeological resources would be impacted during subsurface excavation activities.

c. Archaeology Conclusion

Because the area in general is archaeologically sensitive, Special Condition 8 requires a qualified archaeological monitor and Native American representative approved by the Executive Director to be present during construction or pre-construction activities that involve ground disturbance. If archaeological resources are discovered at the project site during any phase of construction, work must cease until a mitigation plan, prepared by a qualified professional archaeologist in coordination with interested Native Americans, is approved by the State Historical and the Executive Director of the Commission. The plan must provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and be fully implemented.

Only as conditioned is the project consistent with the LCP.

5. Public Access

a. Applicable Public Access Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." The proposed project is located seaward of the first through public road. Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:



Section 30210: *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212(a): *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...*

Section 30223: *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

b. Consistency Analysis

The Coastal Act requires that all projects proposed between the first public road and the sea be analyzed for compliance with the public access and recreation policies of the Coastal Act. In general, the project is consistent with the relevant Coastal Act policies that require the maximization and protection of public access and recreation opportunities. The proposed hotel project is located directly in front of a popular State Park beach with access to the hotel site provided by a major public roadway (Pier Avenue). The project is a high priority visitor-serving recreational use located in an area envisioned for this type of commercial development.

The project is uniquely situated between nearby campgrounds, RV parks, public restrooms, commercial businesses, open dunes areas, and the beach. There is a network of informal trails linking these areas. Some of these trails meander past, and in some areas across, the applicant's property. Informal access in some areas has been persistent enough to create walking trails clearly visible on the ground and in aerial photos.

In terms of public access impacts of the project, the new motel will clearly bring increased commercial and visitor-serving use of public beach resources, particularly Pismo Beach State Park. As approved under this permit, peak use periods of the new development can be expected to bring up to 20 automobiles into the development area. Thus, the increased impacts on public resources would be significant, even if only some of the visitors associated with these cars take advantage of the site's close proximity to the beach.

Another public access issue involves road improvements around the project. The Oceano Specific Plan identifies a commercial structure in the general area of the proposed project and identifies the need for areawide circulation. While the plan shows Smith Avenue (north of the project site), it also identifies this area a sensitive dune habitat. While Smith Avenue, if developed, may help provide areawide circulation, this area is also an active sand dune formation containing sensitive habitat. Constructing Smith Avenue would require significant disturbance of dune habitat, would probably require a large retaining wall since the top of the dune is at a much higher elevation than the project site. Moreover the road would be difficult to maintain due to constant encroachment of wind blown sand. Access improvements to Smith Avenue and Strand Avenue raise significant concerns. To address this concern,



the County proposed a “mid-block” access route along the southern side of the site. This appears to be a reasonable way to address areawide circulation and avoid adverse resource impacts and is retained in this permit approval.

In order to address access and related resource impacts, Special Condition 2c prohibits development of Smith and Strand Avenues. Should abandonment of these streets be pursued in the future, they will be subject to a separate coastal development permit review. To ensure continued public use of the network of informal footpaths, Special Condition 4 allows the applicant to develop the dune buffer area on the northern property boundary with low intensity public access trails. While not a requirement of this permit, there are plenty of opportunities to create more formal linkages between surrounding recreational sites, this property, and the shoreline. For example, a pedestrian path/boardwalk could be constructed at the toe of the existing dune feature on the applicant’s property as a way to stabilize the dune and at the same time provide a valuable access link and project amenity for the area.

c. Access Conclusion

In conclusion, the proposed project is a high priority visitor-serving project that will allow more of the public to access the shoreline. The project site is uniquely situated and presents a number of access and recreation opportunities. As conditioned, the project is consistent with the Coastal Act and LCP regarding public access and recreation.

7. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission’s review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has analyzed the environmental impacts posed by the project and identified changes to the project that are necessary to reduce such impact to an insignificant level. Based on these findings, which are incorporated by reference as if set forth herein in full, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

